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APPEAL BRIEF
Attorney Docket No. 18133-096

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit: 3714
Examiner: Steven Ashburn
Appellants: Arthur Joseph Blake, Jr.
Serial No.: 10/044,157
Filed: January 9, 2002
For: VIDEO GAME MANAGEMENT SYSTEM

Board of Patent Appeals and Interferences
Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Applicant files this Appeal Brief, in triplicate, pursuant to 37 C.F.R. § 1.192(a), in support of his Notice of Appeal, dated April 1, 2004. This Appeal Brief is due on Tuesday, June 1, 2004. A petition for a two month extension of time, up to and including August 1, 2004, is enclosed with a check in the amount of \$420.00 (Check #19045) for the extension. A check for \$330.00 (Check #18747) is enclosed to cover the fee for filing a brief in support of an appeal required under 37 C.F.R. § 1.17(c). The Commissioner is authorized to charge any additional fees that may be due, or to credit any overpayment, to Deposit Account No. 50-0311, Reference 18133-096.

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07/28/2004 MMERKUNEN 00000043 10044157
02 FC:1401 -330.00 OP

08/03/2004 MBERHE 00000106 10044157
01 FC:1402 330.00 OP

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I. REAL PARTY IN INTEREST

Appellant's assignee, American Power Conversion Corporation, of 132 Fairgrounds Road, West Kingston, RI 02892, is the real party in interest in this application.

II. RELATED APPEALS AND INTERFERENCES

The Appellant, his attorneys, and the assignee know of no other related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-4, 6-13, 15, 17-25, 28, 29, 33 and 35 have been finally rejected. Claims 9-13, 15, 17-25, 28, 29, 33, and 35 are the subject of this appeal. The pending claims are listed in Appendix A.

IV. STATUS OF AMENDMENTS

Applicants have filed this appeal from the Examiner's October 6, 2003 Final Office Action. A Response and Amendment was filed February 18, 2004, in response to the Final Office Action, in which the claims were amended. A First Advisory Action, mailed on March 5, 2004 ("First Advisory Action"), indicated that the Response and Amendment would be entered for purposes of Appeal, but a subsequent interview with the Examiner indicated that this was in error. Therefore, the Response and Amendment filed February 18, 2004 has not and will not be entered for purposes of this appeal.

An Amendment has been filed concurrently with this Appeal Brief. Applicants have amended claim 9 to include the limitations of its base claim, claim 1, so that it is pending in independent form, and claims 1, 2-4 and 6-8 have been canceled. For purposes of Appeal, Applicants request that claim 9 be considered in its independent form. All other pending claims stand as amended on July 9, 2003, in response to the April 15, 2003, non-final office action.

V. SUMMARY OF INVENTION

The present invention, as recited in claims 9-13, 15, 17-25, 28, 29, 33, and 35, is directed to a video game management system. The invention as claimed includes a housing having a front face and at least one bay formed in the front face. The bay accepts at least one movable storage module that stores memory cards and/or disks. The housing further includes at least one controller clip that cradles a controller for a video game. In addition, the game management system includes a surge suppression system that provides surge protected power to the one or more electronic devices that are connected to the video game management system via one or more surge protected power outlets. The invention provides surge protection to a home entertainment system, while providing an organized system for video game paraphernalia.

VI. ISSUES

Whether the rejection of claims 9-13, 15, 17-25, 28, 29, 33, and 35 under 35 U.S.C. §103(a) as being unpatentable over various combinations of United States Patent D426,242 (hereinafter the “Ghassemian Patent”), United States Patent 4,394,055 (hereinafter the

“Smith Patent”), United States Patent 5,409,107 (hereinafter the “Browne Patent”), United States Patent 5,253,756 (hereinafter the “Goekler Patent”), United States Patent 6,252,754 (hereinafter the “Chaudhry Patent”), and United States Patent D338,882 (hereinafter the “Reiter Patent”) should be withdrawn. Specifically, the issues of the present appeal may be summarized as follows.

- A.** Whether it is an error to cite the Ghassemian Patent as disclosing all of the elements that it is characterized as showing.
- B.** Whether it is an error to reject claims 15, 17-20, 22 and 28 over the Ghassemian Patent in view of the Smith Patent.
- C.** Whether it is an error to reject claims 9-10, 12, 24 and 25 over the Ghassemian Patent in view of the Smith Patent, and further in view of the Browne patent.
- D.** Whether it is an error to reject claim 13 over the Ghassemian Patent in view of the Smith Patent and the Browne Patent, and further in view of the Chaudhry Patent.
- E.** Whether it is an error to reject claim 21 over the Ghassemian Patent in view of the Smith Patent and further in view of the Goekler Patent.
- F.** Whether it is an error to reject claim 23 over the Ghassemian Patent in view of the Smith Patent and further in view of the Chaudry Patent.
- G.** Whether it is an error to reject claims 29, 33, and 35 over the Ghassemian Patent in view of the Smith Patent and further in view of the Reiter Patent.

VII. GROUPING OF CLAIMS

The pending claims stand or fall together. All of the pending claims are directed to a video game management system including at least one movable storage module disposed in the at least one bay, wherein the storage module is constructed and arranged to store at least one of a disk and a memory card and at least one controller clip, wherein the controller clip is configured to cradle a video game controller. The video game management system in each of the pending claims includes a surge suppression system, wherein the surge suppression system is constructed and arranged to provide surge-protected power to one or more electronic devices.

VIII. ARGUMENTS

Claims 9-13, 15, 17-25, 28, 29, 33, and 35 are pending in this application and each of the claims has been rejected under 35 U.S.C. §103(a) as being unpatentable over a combination of two or more references, at least two of which are U.S. Patent No. D426,242 (the “Ghassemian Patent”) in view of U.S. Patent No. 4,394,055 (the “Smith Patent”).

The Final Office Action states that it would have been obvious to modify the accessory cabinet suggested by Ghassemian in combination with Smith to add various features of the video game management system. The Ghassemian Patent and the Smith Patent are argued by the Examiner as containing all of the limitations of the pending claims, except the controller clip, a label, storing media in their respective original cases, a surge suppression system having RJ-11 or RJ-45 jacks, and an airflow passage.

As discussed below in detail, Applicant respectfully disagrees. First, the Examiner erred in stating that the Ghassemian Patent includes features of the claims that the

Ghassemian reference clearly does not show. Second, combining Ghassemian with Smith and one of Browne, Chaudry, Goekler, and Reiter, as suggested by the Examiner, is also in error and would not have been obvious to one skilled in the art. Even if it were obvious to combine Ghassemian with the other references, altogether the references fail to disclose the claimed invention.

1. The Rejection of the Claims Based on the Ghassemian Patent Is Erroneous and Should Be Withdrawn.

The Ghassemian Patent, a primary reference cited against the pending claims, is a design patent directed to a computer accessory cabinet stand. The design is presented in a series of six (6) figures shown from differing angles (Ghassemian Patent, Figs. 1-6). The rear view of the cabinet shows a number of rectangular and semicircular boxes illustrated on a top portion of the back panel (Ghassemian Patent, Fig. 3). The cabinet in the Ghassemian Patent also includes an ornamental curved front face portion (Ghassemian Patent, Fig. 1). The features of the interior portions of the cabinet in the Ghassemian Patent are unknown, as the design is directed to the exterior of the cabinet.

The claims on appeal are directed to a video game management system. The claims include a housing having a front bay that includes a removable storage module for storing discs and/or memory cards. The Examiner argues that Ghassemian shows a drawer that pulls out from a front face of the cabinet and a storage bay for storing video game components (Final Office Action, page 2). However, based on the figures of the Ghassemian Patent, there is no indication that a storage module is movable from a front face of the cabinet or that the cabinet includes storage modules for storing video game components. As is known, the

description of the invention in a design patent is provided by the drawings. In re Klein, 987 F.2d 1569, 1571 (Fed. Cir. 1993). The outward appearance and functionality of the video game management system of the pending claims is substantially different than that illustrated in the Ghassemian Patent at least because the Ghassemian Patent fails to disclose a front bay having a movable storage module constructed and arranged to store video game discs.

In addition, the pending claims of the Application include a surge suppression system. The surge suppression system serves to provide surge protected power for electronic devices that are part of the home entertainment system, including the video game console. The structure and operation of the surge protection system are shown in Figs. 6A-6C and 7, and on pages 8-10 of the specification. The surge suppression system is advantageous and novel for at least the reason that expensive equipment that is connected to the home entertainment system is protected from power surges and signal line disturbances.

Again, pending claims 9-13, 15, 17-25, 28, 29, 33 and 35 were rejected over a combination of references that include at least Ghassemian in view of Smith. Ghassemian, however, fails to teach or disclose a surge suppression system, as is cited in the present claims. The drawings in the Ghassemian Patent provide a description of an invention that includes rectangular and semi-circular boxes on a back face of the cabinet (Ghassemian, Fig. 3). The rejection states that Ghassemian discloses a surge protection system based on Figure 3. Since there is nothing in the Ghassemian Patent *per se* to indicate that a surge protection device is a part of the cabinet stand, the rejection as to the Ghassemian Patent should be withdrawn. “Design Patents have almost no scope. The claim...is limited to what is shown in the application drawings.” In re Mann, 861 F.2d 1581, 1582 (Fed. Cir. 1988). Further, “[a]ccording to familiar law, a design patent only protects ornamental aspects of the design.”

Oddzon Products, Inc. v. Just Toys, Inc., 122 F.3d 1396, 1404 (Fed. Cir. 1997). In the present case, an ornamental feature, namely rectangular and semi-circular boxes, is being somehow morphed into a surge suppression system through hindsight. There is nothing in the drawings of the Ghassemian Patent *per se* to indicate that a power surge suppression unit is present. Thus, the pending claims are patentable over Ghassemian.

There is nothing in the Ghassemian Patent to indicate to one skilled in the art that the cabinet includes surge suppression circuitry or a front bay having a removable module. Therefore, the rejection of claims 9-13, 15, 17-25, 28, 29, 33, and 35 should be withdrawn for at least the reasons aforementioned.

2. Even if Ghassemian Did Include a Front Bay and a Surge Suppression System, It Would Not Have Been Obvious to One of Ordinary Skill in the Art to Combine Ghassemian with Smith.

In order for a combination of references to render an invention obvious, it must be obvious that their teachings can be combined. In re Avery, 186 USPQ 161 (CCPA 1975). When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. Interconnect Planning Corp. v. Feil, 227 USPQ 543 (Fed. Cir. 1985). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. In re Geiger, 2 USPQ2d 1276 (Fed. Cir. 1988).

As discussed, the Ghassemian Patent is a design patent directed to a computer accessory cabinet stand. At most, Ghassemian may disclose or suggest including plugs as an ornamental feature of the cabinet. In the rear view of the cabinet, the “plugs” are illustrated

on a top portion of the back panel as rectangular and semicircular boxes (Ghassemian Patent, Fig. 3). The interior portions of the cabinet in Ghassemian are unknown, as the design is directed to the exterior portion of the cabinet.

The Smith Patent is directed to a cabinet for video game consoles. The cabinet includes a top portion and a bottom portion. The cabinet has an open top with support ledges. Game consoles are supported in the top opening over the position of the game cartridges, which are stored in the bottom, along with wiring or other peripheral devices. The supports are positioned in such a way that a number of differently shaped game consoles can be supported in the top open portion, while cartridges are neatly stored in the bottom and accessible through the open top of the cabinet.

It would not have been obvious to combine the inventions disclosed in the Ghassemian Patent and the Smith Patent for at least the following reasons. First, the Ghassemian patent figures show only an outside perspective of a cabinet. It is impossible to extrapolate from the figures the existence of a storage module configured to store discs or memory cards. However, the claims of the present Application include the element of a housing having at least one bay formed in the front housing. A storage module is disposed in the at least one bay for storing disks or memory cards. There is at least no suggestion to combine Ghassemian with Smith to achieve the novel elements of claims 9-13, 15, 17-25, 28, 29, 33, and 35.

Further, the Smith Patent includes a housing for holding a video game console, the housing having a front face; however, the housing is designed such that the storage modules are accessed through a top face of the cabinet, not through a front face (Smith Patent. Figs. 1, 7, 8). Access through the top portion of the cabinet is purposeful and is a claimed feature in

Smith (Smith Patent, col. 7, lines 5-10 (claim 1)). The bottom compartment in Smith includes support structures of varying heights that allow support of the bases of varying video game consoles, while permitting storage of video cartridges (Smith Patent, col. 5, lines 11-29). The support aspect is the purpose of having a dual layer console. Storage in the bottom console is permitted because there is designated space between the support structures. There is no motivation to combine the design in Ghassemian, an ornamental compact cabinet having a curved front face and no apparent top opening, with Smith, a stacked-structure cabinet.

All of the pending claims are rejected over at least Ghassemian in combination with Smith, and for the reasons discussed above, all of the claims are patentable over these references. Claims 15, 17-20, 22 and 28 specifically stand rejected under Ghassemian in view of Smith. For at least the reasons discussed above, claims 15, 17-20, 22, and 28 are patentable over the cited references. Rejection of these claims should be withdrawn.

- a. Even if Ghassemian and Smith Did Include the Claimed Features, It Would Not Have Been Obvious to One of Ordinary Skill in the Art to Combine the Ghassemian Patent and the Smith Patent with the Browne Patent.

Claims 9-10, 12, 24 and 25 have been rejected under Ghassemian in view of Smith, and further in view of Browne. The Browne Patent is directed to a computer mouse holder. The computer mouse holder includes an adhesive so that it can be attached to a monitor or other computer system device. The mouse holder forms a pocket into which the mouse can be placed, and a pivoting closure device is positioned on the top portion of the holder. The pivoting closure device is used to hold the mouse wire in a desired position and to keep the mouse from being removed.

It would not be obvious to combine a pocket-shaped adhesive mouse holder, as disclosed in Browne, with the cabinets of Ghassemian and Smith, as discussed above. Browne is directed to a computer mouse holder that holds the mouse when it is not in use. The holder attaches to a side portion of a computer component (Browne Patent, Fig. 1). The design of the Ghassemian patent does not render it obvious to include an exterior holder of any sort. Nor is there motivation to combine the cabinet in Smith with an external computer mouse holder. In fact, Smith discusses storing the manipulatable control components of a video game in the lower section of the stacked cabinet, an internal portion of the cabinet (Smith Patent, col. 2, line 14-16).

For at least the reasons discussed above, claims 9-10, 12, 24 and 25 are patentable over the cited references. Rejection of these claims should be withdrawn.

b. Even if Ghassemian, Smith and Browne Did Include the Claimed Features, It Would Not Have Been Obvious to One of Ordinary Skill in the Art to Combine the Ghassemian Patent and the Smith Patent With the Goekler Patent.

Claim 21 has been rejected under Ghassemian and Smith, and further in view of Goekler. The Goekler Patent discusses a storage box having trays that can be oriented in different ways and at different heights to accept data storage devices of varying sizes (Goekler Patent, Figs. 7-11D). The storage box in Goekler includes a lid that opens so that discs can be placed in trays in an internal portion of the box (Goekler Patent, col. 3, lines 25-30).

Goekler does discuss storage of discs having different sizes and movable internal trays for accommodating differently sized discs. Goekler, however, fails to overcome the deficiencies of the Ghassemian, Smith, and Browne Patents. It would not have been obvious

to combine Goekler, which discloses a storage box having a top lid, with Smith, which teaches a stacked storage box, or with Ghassemian, which does not render it obvious to include any sort of storage box having trays. Further, Goekler does not teach or disclose a video game management system, and therefore does not teach or disclose a cradle for controllers. For at least these reasons, claim 21 is patentable over the cited art, and the rejection of claim 21 should be withdrawn.

c. Even if Ghassemian, Smith and Browne Did Include the Claimed Features, It Would Not Have Been Obvious to One of Ordinary Skill in the Art to Combine the Ghassemian Patent, the Smith Patent, and/or the Browne Patent With the Chaudhry Patent.

Claim 13 has been rejected under Ghassemian and Smith in view of Browne, and further in view of Chaudhry. Claim 23 has been rejected under Ghassemian and Smith, and further in view of Chaudhry. The Chaudhry Patent discusses a plug-in surge suppressor for use with home electronic equipment (Chaudhry Patent, col. 3, lines 1-12). The plug-in surge suppressor can include RJ-11 jacks or RJ-45 jacks (col. 3, line 62 through col. 4, line 6).

Chaudhry, however, fails to overcome the deficiencies of the Ghassemian, Smith, and Browne Patents. It would not have been obvious to combine the plug-in surge suppressor of Chaudhry with the computer accessory stand design of Ghassemian or the stacked storage box of Smith. Chaudhry does not suggest a video game management system into which a surge suppressor is integrated. For at least these reasons, claims 13 and 23 are patentable over the cited art, and the rejection of claims 13 and 23 should be withdrawn.

d. Even if Ghassemian and Smith Did Include the Claimed Features, It Would Not Have Been Obvious to One of Ordinary Skill in the Art to Combine the Ghassemian Patent and the Smith Patent with the Reiter Patent.

Claims 29, 33, and 35 have been rejected under Ghassemian and Smith in view of Reiter. Reiter is a design patent directed to a support base for a computer. Reiter illustrates a flat, wide body portion having three angled leg portions extending from it (Reiter Patent, Fig. 1).

Reiter does not teach or disclose a video game management system into which a surge suppressor is integrated. Nor does Reiter add portions on a top surface of a housing to support an electronic device on a top portion of the housing while providing airflow between the housing and the electronic device, as disclosed in claim 29. Reiter provides nothing more than an ornamental design for a stand on which a computer may be supported. There is no motivation to combine the ornamental design of the computer stand in Reiter with an ornamental design for a computer accessory cabinet, as disclosed in Ghassemian, or with the stacked cabinet for storing media, discussed in Smith. Furthermore, Reiter fails to overcome the deficiencies of the Ghassemian and Smith Patents discussed above. For at least these reasons, claims 29, 33, and 35 are patentable over the cited art, and the rejection of these claims should be withdrawn.

3. The Proposed Combination of Ghassemian in View of Smith, and Further in View of At Least One of Browne, Goekler, Chaudhry, and Reiter, Does Not Teach or Disclose All of the Limitations of the Claimed Invention, and the Rejection of the Claims Under 35 U.S.C. 103 Should be Withdrawn.

To establish a *prima facie* case of obviousness, all of the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981 (CCPA 1974). In the present case, even if it were obvious to combine the teachings of the Ghassmian reference with the Smith reference, which it is not, the proposed combination does not disclose or suggest all of the limitations of the claims. Further, the Browne Patent, the Goekler Patent, the Chaudhry Patent, and the Reiter Patent fail to overcome the deficiencies of the Ghassemian and Smith references.

The claimed invention includes a video game management system having the feature of a surge suppression system constructed and arranged to provide surge protected power to one or more electronic devices. None of the references, alone or in combination, teaches or discloses a video game management system having a surge suppression system constructed and arranged to provide surge protected power to one or more electronic devices. The Examiner suggests that the Ghassemian Patent includes a surge suppression system. As discussed herein, at most, Ghassemian includes ornamental “plugs”. Although the Chaudhry Patent discusses a surge suppressor, Chaudhry does not teach or suggest a surge suppressor in a video game console. In fact, it is cited merely to show the use of RJ-11 jacks and RJ-45 jacks. Without the surge suppression system, it is clear that the references also do not teach or disclose a video game console having a surge suppression system that includes one or more surge protected power outlets, which is yet another claimed element.

In addition, even if it were obvious to combine Ghassemian with Smith, none of the references includes at least one bay formed in a front face, wherein the at least one bay includes a movable storage module disposed in the at least one bay. The Ghassemian Patent includes an ornamental front face having a curved appearance, but no front bay is disclosed. Further, the Smith Patent, as previously discussed, does not include a storage module in a front bay because it includes storage in a bottom portion that is accessible through an open top. Without these limitations, the rejections under 35 U.S.C. §103(a) are in error and should be withdrawn. Further, the Browne Patent, the Goekler Patent, the Chaudhry Patent, and the Reiter Patent fail to overcome the deficiencies of the Ghassemian and Smith Patents, as discussed above.

CONCLUSION

Appellant respectfully submits that claims 9-13, 15, 17-25, 28, 29, 33, and 35 are allowable, and Appellant respectfully requests that the Board reverse the Examiner's rejection of these claims.

Respectfully submitted,


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Dated: July 23, 2004

APPENDIX A: PENDING CLAIMS

1-8. (canceled)

9. (once amended) A video game management system comprising:
a housing having a front face and at least one bay formed in the front face;
at least one movable storage module disposed in the at least one bay, wherein the
storage module is constructed and arranged to store at least one of a disk and a memory card;
at least one controller clip, wherein the controller clip is configured to cradle a video
game controller; and
a surge suppression system, wherein the surge suppression system is constructed and
arranged to provide surge protected power to one or more electronic devices.

10. (original) The video game management system of claim 9, wherein the surge
suppression system includes one or more surge protected power outlets.

11. (once amended) The video game management system of claim 9, further
comprising a power on and a surge protection status light.

12. (original) The video game management system of claim 9, wherein the surge
suppression system further provides surge protection to one or more electronic devices
through at least one jack.

13. (once amended) The video game management system of claim 12, further
comprising at least one of a coaxial cable jack, a RJ 45 jack, and a RJ 11 jack.

14. (canceled)

15. (once amended) A video game management system comprising:
a main housing having a front face with at least one bay formed in the front face;

a surge suppression system disposed within the housing, wherein the surge suppression system is constructed and arranged to provide surge protected power to one or more electronic devices; and

at least one movable storage module disposed within the at least one bay in the main housing, wherein the storage module is constructed and arranged to store at least one of a disk and a memory card.

16. (canceled)

17. (once amended) The video game management system of claim 15, wherein the storage module is constructed and arranged to store at least one of a DVD, a CD ROM, and a video game disk.

18. (once amended) The video game management system of claim 15, wherein the storage module further includes one or more sliding trays that are constructed and arranged for storing a disk and a memory card.

19. (original) The video game management system of claim 15, wherein the storage module further includes a door.

20. (original) The video game management system of claim 15, wherein the storage module further includes a label.

21. (once amended) The video game management system of claim 15, wherein the video game management system is constructed and arranged to store at least one of a DVD, a CD ROM, a memory card, and a video game disk in their original cases.

22. (original) The video game management system of claim 15, wherein the surge suppression system further provides surge protection to one or more electronic devices through at least one jack.

23. (once amended) The video game management system of claim 22, further comprising at least one of a coaxial cable jack, a RJ 45 jack, and a RJ 11 jack.

24. (original) The video game management system of claim 15, further comprising at least one controller clip, wherein the controller clip is configured to cradle a video game controller.

25. (original) The video game management system of claim 24, wherein the controller clip is constructed and arranged to accept a video game controller cord.

26-27. (canceled)

28. (once amended) A video game management system for use with a video game console comprising:
a housing having a front face with at least one bay formed in the front face;
storage means for storing video game components, wherein the storage means are disposed in the at least one bay; and
surge protected power means for providing surge protected power to at least one electronic device.

29. (once amended) A video game management system for storing objects used in conjunction with an electronic device comprising:

a housing having a front face with at least one bay formed in the front face, wherein the housing includes support portions on a top surface of the housing to support a video game console or other electronic device and wherein the support portions are constructed and arranged to provide an airflow passage between the video game console or other electronic device and a surface of the housing;

at least one removable storage module disposed in the at least one bay, wherein the storage module is constructed and arranged to store at least one of a disk and a memory card; and

a surge suppression system disposed within the housing, wherein the surge suppression system is constructed and arranged to provide surge protected power to one or more electronic devices.

30-32. (canceled)

33. (once amended) The video game management system of claim 29, wherein the storage module is constructed and arranged to store at least one of a DVD, a CD ROM, and a video game disk.

34. (canceled)

35. (previously added) The video game management system of claim 29, further comprising mounting feet disposed on a top surface of the housing to provide the support for the video game console.

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